

Decision 02-12-051 December 17, 2002

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Gas Company  
in Compliance with Resolution G-3304 and of  
Southern California Gas Company (U 904 G) and  
San Diego Gas & Electric Company (U 902 G) to  
Consolidate their Gas Supply Portfolios.

Application 01-01-021  
(Filed January 11, 2001)

**OPINION ON REQUEST FOR INTERVENOR COMPENSATION**

This decision grants \$12,201.15 to The Utility Reform Network (TURN) in compensation for substantial contributions to Decision (D.) 02-08-065.

**1. Discussion**

On December 11, 2000, Southern California Gas Company (SoCalGas) filed Advice Letters (AL) 2978 and 2979. In AL 2978, SoCalGas requested that the Commission apply a new formula for determining its monthly procurement rate for noncore customers selecting core subscription service beginning January 1, 2001. In AL 2979, SoCalGas requested that the same formula apply to its noncore customers who requested to transfer to bundled core service after December 1, 2000 (including gas procurement service).

In Resolution G-3304, issued December 21, 2000, the Commission found that if noncore (including wholesale) customers of SoCalGas were allowed to elect core subscription or traditional core service (including procurement service), it would substantially increase SoCalGas' cost of gas for its existing core and core subscription customers. Moreover, the Commission found that SoCalGas' proposal to create a class of procurement service that would be

charged an incremental procurement cost was too complicated and speculative to adopt on an emergency basis. Instead, the Commission ordered SoCalGas to suspend transfers of noncore customers (including wholesale customers) to core subscription or traditional core service, except for customers whose gas supply provider was no longer offering service in California if SoCalGas was convinced that such customers would be left without service. Resolution G-3304 also required SoCalGas to file an application to address the issues contained in its advice letters.

On January 11, 2001, SoCalGas and San Diego Gas & Electric Company (SDG&E) jointly filed Application (A.) 01-01-021. In addressing the issues required by Resolution G-3304, they proposed new rules for eligibility and conditions for core service, the consolidation of the management of SoCalGas and SDG&E's currently separate gas acquisition departments, and the consolidation of the two utilities' gas supply portfolios, including associated storage and interstate capacity.

On April 12, 2001, TURN filed a notice of intent to claim compensation (NOI) in A.01-010-021. After review of the NOI, Administrative Law Judge (ALJ) Barnett found TURN eligible to file for intervenor compensation by ruling dated April 19, 2001.

## **2. Requirements for Awards of Compensation**

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812.<sup>1</sup> Section 1804(a) requires an intervenor to file an NOI to claim

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<sup>1</sup> All statutory citations are to the Public Utilities Code.

compensation within prescribed time periods. The NOI must present information regarding the nature and extent of the customer's planned participation and an itemized estimate of the compensation the customer expects to request.<sup>2</sup> It may also request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Under § 1804(c), an intervenor requesting compensation must provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

"in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

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<sup>2</sup> To be eligible for compensation, an intervenor must be a "customer," as defined by § 1802(b). In today's decision, "customer" and "intervenor" are used interchangeably.

### **3. Timeliness of Request**

Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. The Commission approved D.02-08-065 at its scheduled public meeting on August 22, 2002 and mailed it to parties of record on August 29, 2002. The sixtieth day after the August 22 meeting was October 21, 2002. TURN's request for compensation was timely filed on October 18, 2002.

### **4. Substantial Contribution to Resolution of Issues**

Pursuant to Pub. Util. Code § 1802(h), a party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.<sup>3</sup> Where a party has participated in settlement negotiations and endorses a settlement of some or all issues, the Commission

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<sup>3</sup> The Commission has provided compensation even when the position advanced by the intervenor is rejected. D.89-03-063 awarded San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved). (See also, D.89-09-103, Order modifying D.89-03-063 which stated that in certain exceptional circumstances, the Commission may find that a party has made a substantial contribution in the absence of the adoption of any of its recommendations. Such a liberalized standard should be utilized only in cases where a strong public policy exists to encourage intervenor participation because of factors not present in the usual Commission proceeding. These factors must include (1) an extraordinarily complex proceeding, and (2) a case of unusual importance. Additionally, the Commission may consider the presence of a proposed settlement.)

uses its judgment and the discretion conferred by the Legislature to assess requests for intervenor compensation.<sup>4</sup>

As we explain below, we find that TURN's efforts in A.01-01-021, in part, yielded a substantial contribution to D.02-08-065. TURN itself has reduced its request to account for the fact that the Commission did not adopt its primary proposal in this proceeding.

#### **4.1 Conditions for Core Service**

TURN provided justifications for a permanent requirement for core procurement or core transportation service, based on the need to amortize necessary infrastructure investments and to prevent stranded costs. TURN supported increasing the term for any service status transfer to longer than the current one or two-year commitment. The Commission decided that the combination of a five-year commitment and one-year cross-over rate was "sufficient to prevent price arbitrage and protect existing core customers." (D.02-08-065, at p.21.)

#### **4.2 Portfolio Consolidation and Reverting El Paso Capacity**

TURN did not oppose the portfolio consolidation; however, TURN argued that any consolidation should be conditioned on allocating the reverting El Paso capacity to the combined portfolio, with a review of core interstate capacity needs in the next Biennial Cost Allocation Proceeding (BCAP). This position was strongly opposed by the Southern California Generation Coalition (SCGC). TURN also recommended that consolidation be accompanied by an immediate reduction in base margin to account for merger savings.

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<sup>4</sup> See D.98-04-0590, *mimeo.*, at 41.

The initial proposed decision of ALJ Barnett allowed the portfolio consolidation and assigned all capacity to the combined portfolio. The alternate proposed decision of Commissioner Lynch denied authority to consolidate and included extensive discussion concerning market power and the border price spikes of 2000/2001. TURN did not oppose either result, but TURN recommended amending the discussion of the alternate proposed decision.

The Commission adopted the alternate proposed decision, but made some modifications to the discussion as recommended in TURN's comments.

#### **4.3 Treatment of Wholesale Customers**

The City of Long Beach filed a petition for modification of Resolution G-3044, requesting authority for wholesale core load to choose core subscription service. The petition was separately processed in proceeding A.01-02-015. TURN opposed the request by the City of Long Beach, and the Commission did not adopt the proposed decision, which would have granted Long Beach's request. Eventually, Long Beach and SoCalGas reached an agreement, which incorporated TURN's suggestions and which was filed as a proposal in this proceeding. TURN was successful in arguing against the adoption of the proposal in A.01-02-015 and has included all hours spent on that related proceeding in this request. Also, since A.01-01-021 evolved from the filing of AL 2978 and AL 2979, TURN has included hours spent on those related advice letters in its request. Since the issues addressed by TURN in both A.01-02-015 and ALs 2978 and 2979 are directly related to issues addressed in A.01-01-021, it is reasonable to include the associated costs in this compensation request.

#### **4.4 Voluntary Disallowance of 40% of Attorney Time**

The Commission did not adopt TURN's primary recommendation of a permanent commitment to core status. However, the Commission favorably viewed the proposal for a longer term commitment than the current requirements. The Commission's rejection of portfolio consolidation and elimination of core subscription rendered moot TURN's recommendations for conditioning the consolidation and its proposal for wholesale customer core subscription.

Because many of the issues in this proceeding were interrelated, TURN has not attempted to parcel out disallowances based on issue. Rather, TURN has voluntarily disallowed all attorney time spent on substantive issues by 40%. Based on the discussion above, we find that TURN has demonstrated that it made a substantial contribution D.02-08-065. We also find that the 40% reduction for attorney time spent on substantive issues, as proposed by TURN, is a reasonable method for determining its compensation for this proceeding.

#### **4.5 Overall Benefits of Participation**

In D.98-04-059, the Commission adopted a requirement that a customer demonstrate that its participation was "productive," as that term is used in § 1801.3, where the Legislature provided guidance on program administration. (See D.98-04-059, *mimeo.*, at 31-33, and Finding of Fact 42.) D.98-04-059 explained that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

TURN submits that no exact value can be assigned to the adoption of service transfer conditions, although Resolution G-3304 noted that potential migration of noncore customers to core status would substantially raise the weighted average cost of gas, increasing residential bills by about \$35 per month based on assumed levels of transfer. (Resolution G-3304, page 2.) The proposed decision in A.01-02-015 further noted that transfer of wholesale core load would have increased SoCalGas' retail procurement rates by 6-8 cents per therm, for an annual cost shift of over \$200 million. TURN contends that both of these outcomes have been mitigated by the final rules adopted in D.02-08-065.

TURN also asserts that its participation did not duplicate the showings of other parties. Its position concerning service status conditions and reverted capacity were similar, though not identical, to those of ORA. In addition, it offered different proposals for terms for cross-over rates, offered rationale for conditioning any purchasing of gas for electric generation, and independently argued for removing merger savings from base margin. TURN also stresses that it minimized its efforts by coordinating with ORA, noting that its request for just over two weeks of attorney time is quite low given the issues in the proceeding.

We find that the participation of TURN related to D.02-08-065 was productive and avoided unreasonable duplication with other parties.



## 5. Reasonableness of Requested Compensation

TURN requests \$11,895.25 as follows<sup>5</sup>:

	Year	Rate	Hours	Total
Attorney Costs				
Hawiger - Professional	2001	\$190.00	28.17	\$ 5,352.30
Hawiger - Compensation	2001	\$ 95.00	1.50	\$ 142.50
Hawiger - Professional	2002	\$200.00	12.81	\$ 2,562.00
Hawiger - Compensation	2002	\$100.00	7.25	\$ 725.00
Florio - Professional	2001	\$350.00	5.85	\$ 2,047.50
Florio - Professional	2002	\$385.00	1.05	\$ 404.25
Total Attorney Costs			56.63	\$11,233.55
Other Costs				\$ 661.70
Total Costs				\$11,895.25

### 5.1 Hours Claimed

Time logs submitted by TURN include a daily breakdown of hours by activity. We find that TURN has adequately and reasonably supported the 56.63 hours for which it claims compensation related to A.01-01-021.

### 5.2 Hourly Rates

Section 1806 requires the Commission to compensate eligible parties at a rate that reflects the “market rate paid to persons of comparable training and experience who offer similar services.” We have previously adopted the requested rates for Marcel Hawiger of \$190/hour for 2001 in D.01-10-008 and \$200/hour for 2002 in D.02-09-040 and the requested rates for Michel Florio of

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<sup>5</sup> Hours shown for professional services have been reduced by 40%, as proposed by TURN. “Other Costs” were incorrectly computed and will be corrected in this decision.

\$350/hour for 2001 in D.02-06-070 and \$385/hour for 2002 in D.02-09-040. We will utilize these hourly rates again here.

### **5.3 Other Costs**

TURN's request of \$11,895.25 includes \$661.70 for miscellaneous expenses associated with its efforts related to A01-01-021. Compensation is sought for photocopying, postage and telephone expenses. However, TURN has included detailed documentation in its request that supports expenses amounting to \$967.60. TURN has since confirmed that in computing the total amount of its request, \$305.90 was inadvertently omitted. We find the documented amount of \$967.60 reasonable. Inclusion of that amount increases the award to \$12,201.15.

### **6. Award to TURN**

We award TURN \$12,201.15 for contributions to D.02-08-065. Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after TURN filed its compensation request. Interest will continue until the utility makes full payment. We will allocate responsibility for payment between SoCalGas and SDG&E according to their respective share of the California jurisdictional gas revenues filed with the Commission for each utility for 2001, which results in the following allocation:

SoCalGas	85.0%
SDG&E	15.0%
Total:	100.0%

As in all intervenor compensation decisions, we put TURN on notice that the Commission Staff may audit records related to this award. Adequate accounting and other documentation to support all claims for intervenor

compensation must be made and retained. The records should identify specific issues for which TURN requests compensation, the actual time spent, the applicable hourly rate, and any other costs for which compensation is claimed.

## **7. Waiver of Comment Period**

Pursuant to Rule 77.7(f)(6), the otherwise applicable 30-day period for public review and comment is being waived.

## **8. Assignment of Proceeding**

Henry M. Duque is the Assigned Commissioner and Robert Barnett is the assigned Administrative Law Judge in this proceeding.

## **Findings of Fact**

1. TURN has made a timely request for compensation for its contributions to D.02-08-065.

2. TURN contributed substantially to D.02-08-065. The voluntary disallowance of 40% of attorney time on substantive issues is a reasonable method for determining compensation for this proceeding.

3. The participation of TURN was productive and avoided unreasonable duplication with other parties.

4. TURN requests hourly rates for Hawiger and Florio that have previously been approved by the Commission.

5. The hours claimed for work performed by Hawiger and Florio are itemized and reasonable.

6. The miscellaneous costs incurred by TURN in the amount of \$967.60 are reasonable.

## **Conclusions of Law**

1. TURN has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.

2. TURN should be awarded \$12,201.15 for contributions to D.02-08-065.
3. Per Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision may be waived.
4. This order should be effective today so that TURN may be compensated without unnecessary delay.

## **O R D E R**

### **IT IS ORDERED** that:

1. The Utility Reform Network (TURN) is awarded \$12,201.15 in compensation for its substantial contribution to Decision 02-08-065.
2. Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) shall be responsible for making payment to TURN as follows: SoCalGas 85%; SDG&E 15%. Payment shall be made within 30 days of the effective date of this order. SoCalGas and SDG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, beginning with the 75<sup>th</sup> day after October 18, 2002, the date the request was filed.
3. The comment period for today's decision is waived.

This order is effective today.

Dated December 17, 2002, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
CARL W. WOOD  
GEOFFREY F. BROWN  
MICHAEL R. PEEVEY  
Commissioners

### Compensation Decision Summary Information

<b>Compensation Decision(s):</b>	D0212051
<b>Contribution Decision(s):</b>	D0208065
<b>Proceeding(s):</b>	A0101021
<b>Author:</b>	ALJ Barnett
<b>Payer(s):</b>	Southern California Gas Company and San Diego Gas & Electric Company

### Intervenor Information

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Reason Change/ Disallowance</b>
The Utility Reform Network	10/18/02	\$11,895.25	\$12,201.15	Arithmetic error

### Advocate Information

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Marcel	Hawiger	Attorney	The Utility Reform Network	\$190 \$200	2001 2002	\$190 \$200
Michel	Florio	Attorney	The Utility Reform Network	\$350 \$385	2001 2002	\$350 \$385